(16,293.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 1003.

THE RICHMOND AND ALLEGHANY RAILROAD COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

THE R. A. PATTERSON TOBACCO COMPANY.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 8, 1896.

1 The petition of The Richmond and Alleghany Railroad Company, H. L. Terrell, surviving trustee of himself and Thomas S. Bocock, deceased, trustees; Henry M. Alexander, surviving trustee of himself and Henry K. Ellyson, deceased, trustees, respectfully shows that on the 12th day of March, 1896, the supreme court of appeals of Virginia rendered a final decree against your petitioners in a certain cause wherein The R. A. Patterson Tobacco Company was complainant and your petitioners were defendants, your petitioner The Richmond and Alleghany Railroad Company, H. L. Terrell, surviving trustee of himself and Thomas S. Bocock, deceased, trustees; Henry M. Alexander, surviving trustee of himself and Henry K. Ellyson, deceased, trustees, being the appellant of record in the said supreme court of appeals of Virginia and the said R. A. Patterson Tobacco Company being the appellee, affirming the decree of the circuit court of the city of Richmond for the amount of appellee's claim and costs, as will appear by reference to the record and proceedings in said cause, and that the said supreme court of appeals of Virginia is the highest court in said State in which a decision in the said suit could be had; and your petitioners claim the right to remove said decree to the Supreme Court of the United States by writ of error, under section 709 of the Revised Statutes of the United States, because in said suit was drawn in question the validity of a statute of the said State of Virginia, to wit, section 1295 of the Code of Virginia, which is as follows:

"SEC. 1295. Liability of carrier for loss or injury to goods.—When a common carrier accepts for transportation anything, directed to a point of destination beyond the terminus of his own line or route, he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless, at the time of such acceptance, such carrier be released or exempted from such liability by contract in writing signed by the owner or his agent; and, although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless, within a reasonable time after demand made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge"

2 on the ground of its being repugnant to the Constitution and laws of the United States, and the decision is in favor of its validity, as appears by the record of the proceedings in said cause, which is herewith submitted. Wherefore your petitioners pray the allowance of a writ of error, returnable into the Supreme Court of

the United States, and for citation and supersedeas; and your petitioner- will ever pray, etc.

RICHMOND & ALLEGHANY
RAILROAD CO.
H. L. TERRELL,
Surviving Trustee.
HENRY M. ALLEXANDER,
Surviving Trustee,
By COUNSEL, *Petitioners.*
H. T. WICKHAM,
H. TAYLOR, JR.,
Attorneys for Petitioners.

In the Supreme Court of Appeals of Virginia.

Desiring to give the petitioners an opportunity to test in the Supreme Court of the United States the question presented in the foregoing petition, it is ordered that a writ of error be allowed to said court, and that the same be made a supersedeas, the bond, in the penal sum of one thousand dollars ($1,000), herewith presented being approved.

In testimony whereof witness my hand this 27 day of April, 1896.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

3 *Assignment of Error.*

In the Supreme Court of the United States.

In the Matter of the Petition of the RICHMOND AND ALLEGHANY RAILROAD COMPANY, H. L. Terrell, Surviving Trustee of Himself and Thomas S. Bocock, Deceased, Trustees; Henry M. Alexander, Surviving Trustee of Himself and Henry K. Ellyson, Trustees, Appellants,
against
THE R. A. PATTERSON TOBACCO COMPANY, Appellee.

The appellants, by their attorney, say that in the record and proceedings in the above-entitled matter there is manifest error, *to* this, to wit:

That in said proceedings is drawn in question the validity of a statute of the State of Virginia, to wit, section 1295 of the Code of Virginia, which is as follows:

"SEC. 1295. Liability of carrier for loss or injury to goods.—When a common carrier accepts for transportation anything, directed to a point of destination beyond the terminus of his own line or route, he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless, at the time of such ac-

ceptance, such carrier be released or exempted from such liability by contract in writing signed by the owner or his agent; and, although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless, within a reasonable time after demand made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge"

upon the ground of its being repugnant to article 1, section VIII, clause 3, of the Constitution of the United States, which is as follows:

"3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes"

and the decision of the highest court of the State of Virginia in which a decision could be had in said proceedings is in favor of the validity of said State statute, as appears by the record of said proceedings.

H. T. WICKHAM,
H. TAYLOR, JR.,
Att'ys for Appellants.

4 [Endorsed:] Richmond & Alleghany Railroad Co. & others *v.* R. A. Patterson Tobacco Co. Petition for writ of error, &c.

5 VIRGINIA:

In the Supreme Court of Appeals, on Thursday, March 12th, 1896.

Be it remembered that heretofore, to wit, at a supreme court of appeals, on Thursday, March 9th, 1893, upon the petition of the Richmond and Alleghany Railroad Company, an appeal is allowed it and supersedeas awarded to a decree pronounced by the circuit court of the city of Richmond on the 14th day of February, 1893, in the causes pending in said court under the style of Terrell and Bocock, trustees, against The Richmond and Alleghany Railroad Company and others, and Alexander and Ellyson, trustees, against the same, and in which suit the R. A. Patterson Tobacco Company filed a petition, upon the petitioner or some one for it entering into bond, with good security, in the clerk's office of the said circuit court, in the penalty of five hundred dollars and with condition as the law directs; which petition, with the transcript of the record accompanying the same, is as follows:

6 *"Petition.*

In the Supreme Court of Appeals of Virginia, at Richmond.

RICHMOND AND ALLEGHANY RAILROAD COMPANY
vs.
R. A. PATTERSON TOBACCO COMPANY.

To the honorable judges of the supreme court of appeals of Virginia:

The petition of the Richmond and Alleghany Railroad Company respectfully shows to your honors that it is aggrieved by a decree rendered by the circuit court of the city of Richmond, on the fourteenth day of February, 1893, in the chancery causes therein depending under the style of Terrell and Bocock, trustees, *vs.* Richmond and Alleghany Railroad Company and others, and Alexander and Ellyson, trustees, *vs.* same.

These suits are bills of foreclosure, filed against the Richmond and Alleghany Railroad Company by the trustees in its several mortgages, and for the appointment of a receiver. Receivers were appointed, and for several years the road was operated by them, until April, 1889, when the property was sold.

A transcript of so much of the record as may be necessary to the correct understanding of the decree complained of is herewith presented. An inspection of the record will show that on August 1, 1888, the R. A. Patterson Tobacco Company delivered to the receivers of the Richmond and Alleghany Railroad Company, at Richmond, Virginia, a lot of tobacco, consigned to Mann & Levy, at Bayou Sara, Louisiana, to be transported in accordance with the bill of lading filed with the petition of the R. A. Patterson Tobacco Company. This tobacco was lost after the same had passed out of the possession of the Richmond and Alleghany Railroad Company, and the R. A. Patterson Tobacco Company filed its petition in these causes, which are retained on the docket of the circuit court of the city of Richmond for the purpose of affording an opportunity for the adjustment of unsettled claims arising during the receivership. The answer of the Richmond and Alleghany Railroad Company was filed, setting up, amongst other defences, "that, even if the statements contained in said petition were true, no liability would be incurred by respondent for the following reason—to wit: Respondent has been informed, and believes and charges, that the loss referred to occurred beyond the terminus of its line, and upon a connecting line over which it had no authority or control."

This matter came on to be heard upon the petition, the bill of lading filed therewith, the answer of the Richmond and Alleghany Railroad Company, and the following facts agreed: "That the bill of lading was not signed by the shipper or their agent; that the shipment was an interstate one, and the tobacco was delivered by the Richmond and Alleghany Railroad Company to the next succeeding carrier, and was lost after the same had left the possession

of the Richmond and Alleghany Railroad Company; that the sole question submitted to the court and passed on was whether section 1295, Code of Virginia, 1887, was in conflict with article I, section 8, clause 3, of the Constitution of the United States, it being admitted that if said section, 1295, was constitutional the defendant was liable; but if it was not constitutional, then, under the contract of shipment, the defendant was not responsible."

7 The bill of lading, amongst other things, provides: "Consigned to Mann & Levy, at Bayou Sara, La., to be transported by the Richmond and Alleghany railroad to ——, and there to be delivered to connecting railroad or water line, and so on by one connecting line to another, until they reach the station or wharf nearest to the ultimate destination, * * * it is mutually agreed that the liability of each carrier as to goods destined beyond its own route shall be terminated by proper delivery of them to the next succeeding carrier, * * * in case of loss, * * * imposing any liability hereunder the transportation company or carrier in whose actual custody they were at the time of such loss, * * * shall alone be responsible therefor. * * * The acceptance of this bill of lading is an agreement on the part of the shipper, owner, and consignee of the goods to abide by all its stipulations, exceptions, and conditions, as fully as if they were all signed by such shipper, owner, and consignee. This bill of lading is signed for the different carriers who may engage in the transportation, severally, but not jointly, and each of them is to be bound by and have the benefit of all the provisions thereof as if signed by it, the shipper, owner, and consignee."

This contract or bill of lading was not signed by the shipper, and under section 1295 of the Code of Virginia, 1887, the judge of the circuit court of the city of Richmond held that your petitioner was liable for the loss of the goods after the same had left its possession, because of the requirement of said section, which is as follows:

"When a common carrier accepts for transportation anything directed to a point of destination beyond the terminus of his own line or route, he shall be deemed thereby to assume an obligation for its safe carriage to such point or destination, unless at the time of such acceptance such carrier be released or exempted from such liability by contract in writing, signed by the owner or his agent; and although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor unless within a reasonable time after demand made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge."

Your petitioner submits that the judge committed a grave error in holding this act not in conflict with article I, section VIII, clause 3, of the Constitution of the United States, for the following reasons:

1. The contract was for an interstate shipment, and was, therefore, commerce between States.

2. Section 1295 prescribes certain terms and conditions on which this contract shall be made, attempts to regulate said contract; to define the rights of the parties under the same.

3. Where the subject of a contract is the transportation of articles of commerce from one State to another, the sole and exclusive power to prescribe its terms is vested by the Constitution in Congress, and no power is left in the State by which it can make any regulation; and non-action on the part of Congress means that there shall be no regulation by the State.

I.

There can be no transportation from one State to another by a common carrier without a contract entered into between him and the shipper. This contract may be either express or implied, written or verbal, but a contract of one or the other kind is an essential factor, without which there can be no transportation. It is that on which transportation depends; and any regulation of the contract must necessarily be a regulation of commerce. That transportation is commerce has been so often decided by the Supreme Court of the United States that no citation of authority is necessary. It would be idle to say that the State cannot regulate transpor-
8 tation between the States, and at the same time admit its power to regulate the contract without which there can be no transportation. Any regulation therefore of the contract of transportation must, of necessity, be a regulation of commerce. In Railroad Co. *v.* R. R. Com. of Tenn., 19 Fed. Rep., 679, Hammond, J., at page 710, says: "But when a plain and unmistakable case of direct action on the commerce itself is presented, as all regulations or restrictions on the contract of transportation must be, all that need be looked to is the character of the commerce so regulated, and if it be interstate transportation, as defined in the cases cited, regulation or restriction by the State is void."

In Tel. Co. *v.* Pendleton, 122 U. S., 347, a statute of Indiana required messages to be sent in the order in which they were received, and that the messages should be delivered by messenger when the recipient lived within one mile of the office. Here was an attempt to add to the terms of every contract made for the transmission of messages, and it was held by the court that the Indiana statute was void; the power to make such regulations residing only in Congress.

This matter has been well expressed by a recent writer in a volume entitled "The Railroads and the Commerce Clause," by Francis Cope Hartshorne, when he says at page 87: "But if it be essentially an attempt on the part of the State to deal with matters which are more properly the subject of contract between the carrier and the person employing him, then it is an attempt to restrict his freedom in making contracts, and must be void when the contract sought to be made is one in the course of interstate transportation * * * all rights, duties and liabilities which have their origin in a contract between the parties, and have no connection with the good order, peace and safety of the community; but only with the convenience or commercial advantage of the contracting parties, can only be modified or added to by the authority which has exclusive jurisdiction of the subject-matter of such contract."

In Almy *vs.* California, 24 How., 169, Chief Justice Taney, at pages 173–'4, says, when speaking of the constitutional prohibition on any State to impose a tax on imports or exports: "If the tax was laid on the gold or silver exported every one would see that it was repugnant to the Constitution of the United States. * * * But a tax or duty on the bill of lading, although differing in form from a duty on the article shipped, is in substance the same thing; for a bill of lading, or some written instrument of the same import, is necessarily always associated with every shipment of articles of commerce from the ports of one country to those of another, and consequently a duty upon that is in substance and effect a duty on the articles exported." So, in this case, any limitation or regulation of the bill of lading is a limitation or regulation of commerce between the States. It makes no difference whether the regulation is wise or unwise, whether it does, or does not, impede or hamper commerce, nor whether it does, or does not, discriminate. The question is, Can the State act — all? It is a question of power. Congress has the exclusive power, therefore the State, in a case of this kind, can have no power.

The State of Missouri attempted by statute to impose certain liabilities on railroads when engaged in interstate commerce, the particular liability imposed being that any railroad transporting cattle through Missouri, coming from certain portions of the country, should be liable for all damages sustained by residents along the line of the road if their cattle died from a certain kind of fever, and the fact that the cattle died from the fever should be *prima facie* evidence that they took it from the cattle being transported on the railroads. This statute came under review in R. R. Co. *vs.* Husen, 95 U. S., 465, and was held unconstitutional, being a restriction and an attempt to impose liability on interstate commerce just as an attempt is here made by section 1295 to impose liability and to regulate an essential instrument of interstate commerce.

9

II.

An examination of section 1295 is all that is necessary to show that it prescribes how this contract shall be made, imposes certain obligations in case the contract is not made in the manner prescribed, and even though made in the manner prescribed, imposes further and additional obligations unless some other thing is done by the carrier. Clearly, then, this section not only prescribes the manner in which this contract shall be made, but, even if it is made as prescribed, one of the contracting parties must do some other and further act before it shall have the benefit of the contract. It prescribes a penalty for failure to make the contract in the mode prescribed, thus in effect saying that the parties shall not make such a contract as they may deem best for their mutual benefit. That this is a regulation of the contract is too plain to be disputed, and if a regulation of the contract of transportation it is a regulation of commerce. Once allow the State to regulate the contract, you thereby give absolute control of the whole subject to the State, while the Constitution vests it in Congress.

III.

In Walton *vs.* State of Missouri, 91 U. S., 275, it is said by Mr. Justice Field, delivering the opinion of the court, page 280: "Where the subject to which the power" (to regulate commerce) "applies is national in its character or of such a nature as to admit of uniformity of regulation, the power is exclusive of all State authority; it will not be denied that that portion of commerce with foreign countries, and between the States, which consists of the transportation and exchange of commodities is of national importance, and admits and requires uniformity of regulation. The very object of investing this power in the General Government was to insure this uniformity against discriminating State legislation."

The same judge, delivering the opinion of the court in County of Mobile *vs.* Kimball, 102 U. S., 691, speaking of the power to regulate commerce, says on page 697:

"The subjects, indeed, upon which Congress can act, under this power, are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce to a foreign country, or between the States, which consists in the transportation, purchase, sale, and exchange of commodities. There can of necessity be only one system or plan of regulation, and that Congress alone can prescribe. Its non-action in such cases, with respect to any particular commodity, or mode of transportation, is a declaration of its purpose that the commerce in that commodity, or by that means of transportation, shall be free. There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens, and against the products and citizens of other States. And it is a matter of public history, that the object of vesting in Congress the power to regulate commerce with foreign nations, and amongst the States was to insure uniformity of regulation against conflicting and discriminating States' legislation. Of the class of subjects, local in their nature, or intended as mere aids to commerce, which are best provided for by special legislation, may be mentioned harbor pilotage, bouys, and beacons to guide mariners to the proper channel in which to direct their vessels."

In Brown *vs.* Houston, 114 U. S., 622, Mr. Justice Bradley, delivering the opinion of the court, says (pp. 630–'1): "All laws and regulations are restrictive of natural freedom to some extent, and where no regulation is imposed by the Government which has the exclusive power to regulate, it is an indication of its will that the matter shall be left free. So long as Congress does not pass any law to regulate commerce among the States, it thereby indicates

its will that commerce shall be left free and untrammelled,
10 and any regulation of the subject, by the States, is repugnant to such freedom. This has been frequently laid down as law in the judgment- of this court."

In Bowman *vs.* C., &c., R'y Co., 125 U. S., 465, Mr. Justice Matthews, delivering the opinion of the court, after referring to certain sections of the Revised Statutes, says (p. 485): "So far as these regulations made by Congress extend, they are certainly indications of its intention that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, or by the States in particular cases by the express permission of Congress. On this point the language of this court in the case of The County of Mobile *vs.* Kimball, 102, U. S., 691-'7, is applicable. Repeating and expanding the idea expressed in the opinion in the case of Colley *vs.* Board of Port Wardens, 12 How., 299."

The learned judge then proceeds to quote at length the passage we have already extracted from the opinion of the court in the case of County of Mobile *v.* Kimball.

We deem it unnecessary to refer particularly to what is said in other decisions of the Supreme Court of the United States, believing that the passages, already quoted, show the firmly settled rule on this subject, and content ourselves with referring to the following as some of the many additional cases which establish it: (Gibbons *v.* Ogden, 9 Wheaton, 1; State Freight Taxe Cases, 15 Wall., 232, see 279; Henderson *v.* Mayor, N. Y., 92 U. S., 259, see 273-'2; Hall *v.* Decuir, 95 U. S., 485, see 490; Gloucester Ferry Co. *v.* Penn., 114 U. S., 196, see 203-'4; Walling *v.* Michigan, 116 U. S., 446, see 455; Leisey *v.* Hardin, 135 U. S., 100; N. & W. R. R. Co. *v.* Penn., 136 U. S., 114.)

This is no new question in this court. The whole matter was most elaborately discussed in Norfolk & Western Railroad Co. *v.* Commonwealth, 88 Va., 95, and with this case before it your petitioner is at a loss to know upon what grounds the circuit court of the city of Richmond rested its decision. Section 3801, Code of Va., 1887, came under consideration in the above case, and was held by this court to be unconstitutional so far as the same applied to trains engaged in interstate commerce. This was a Sunday law, and it was a question whether the law should not be held to be valid as an exercise of its police power by the State, and on this ground, one of the judges filed a dissenting opinion, but the court, after a most careful review of the authorities, held that the law could not be sustained even on that ground. That question does not arise in this case. Section 1295 cannot possibly be defended as a police regulation. It affects neither the lives, health, happiness, morals, good order nor safety of the community. It merely undertakes to fix the extent of liability to be assumed by carriers who accept for transportation any article of commerce destined to a point beyond the terminus of their own line or route. In the course of the opinion, Judge Lewis says: "The power thus conferred, as the Supreme Court of the United States has repeatedly decided, is complete and

exclusive. * * * Any attempt, therefore, by a State to regulate foreign or interstate commerce, is the attempted exercise of a power which has been surrendered by the State, and granted exclusively to the National Government. It is an attempt to do that which Congress alone is authorized to do, and hence is a nullity. * * * Where the subject is national in its character, admitting of uniformity of regulation, such as the transportation and exchange of commodities between the States, Congress alone can act upon it. * * * Nor does it matter, in such a case that Congress has not acted, for it is now settled that the silence of Congress is not only not a concession that the powers reserved by the States may be exerted as if the specific power had been elsewhere reposed, but, on the contrary, the only legitimate conclusion is that the General Government intended that power should not be affirmatively exercised, and the action of the States cannot be permitted to affect that which would be incompatible with such intention."

11 It was admitted by the court below, in this case, that had Congress adopted a bill of lading differing from the requirements of section 1295, and a shipment had been made under the congressional bill of lading, then the petitioner could not have set up the requirements of section 1295 as a basis of recovery, that the law of Congress would control. How then could the court below fail to be convinced that the law of this State was invalid, when it had before it what was said by this court in the Norfolk and Western case (page 102)—viz: "Such a statute if passed by Congress so far as it concerns foreign and interstate commerce would be valid, not, however, as the exercise of po'ice power, but as a regulation of commerce. And the reason which would make such legislation valid as an act of Congress, makes it invalid as an act of a State legislature."

For the foregoing reasons your petitioner prays your honors for an appeal and supersedeas from and to the decree complained of, that said decree may be reversed and annulled, and that such order as may be proper may be entered by this court, and for such other relief as may be right and proper.

RICHMOND AND ALLEGHANY RAILROAD CO.,
By WM. J. ROBERTSON AND
HENRY TAYLOR, JR., *Of Counsel.*

We, Wm. J. Robertson and Henry Taylor, Jr., attorneys practicing in the supreme court of appeals of Virginia, do certify that in our opinion the decree of the circuit court of the city of Richmond complained of in the foregoing petition, should be reviewed by said court of appeals.

WM. J. ROBERTSON.
HENRY TAYLOR, JR.

Appeal allowed and supersedeas awarded. Bond required in the penalty of $500.

To the clerk of the supreme court of appeals at Richmond, Va.

VIRGINIA:

In the circuit court of the city of Richmond the following proceedings were had:

H. L. TERRELL and THOMAS S. BOCOCK, Trustees, Plaintiffs,
against
THE RICHMOND AND ALLEGHANY RAILROAD COMPANY *et als.*, Defendants,

and

HENRY M. ALEXANDER and HENRY K. ELLYSON, Trustees, Plaintiffs,
against
THE RICHMOND AND ALLEGHANY RAILROAD COMPANY *et als.*, Defendants.

These causes came on this day to be further heard on the papers formerly read, and on the motion of the R. A. Patterson Tobacco Company, to be allowed to file its petition, praying for damages upon a contract alleged in said petition to have been broken by the negligence of Decatur Axtell, the receiver in said cause, or his agents, on or about the 1st day of August, 1888. And the court, upon consideration, doth adjudge, order and decree that the Richmond and Alleghany Railway Company be and they are hereby required to show cause or or before the first day of the next term of this court why the said petition should not be filed.

12 And the court doth order that a copy of said petition be served upon said Richmond and Alleghany Railway Company within the next ten days.

And at another day—to wit: At a circuit court of the city of Richmond, held at the court-room thereof in said city, in building No. 1007, Main street, on Tuesday, February 14th, 1893.

This day these causes came on to be again heard on the papers formerly read, and upon the petition of the R. A. Patterson Tobacco Company, the bill of lading therewith filed, marked Exhibit "A," the answer of the Richmond and Alleghany Railroad Company, the general replication to said answer, and the following facts agreed to by counsel, and stated to the court:

That the bill of lading aforesaid is not signed by the shippers or their agents; that the tobacco in question was an interstate shipment; that the same was delivered by the Richmond and Alleghany Railroad Company to the next succeeding carrier, and was lost after the same had left the possession of the Richmond and Alleghany Railroad Company; that the sole question submitted to the court for decision was whether section 1295, Code of Virginia 1887, was in conflict with article I, section 8, clause 3, of the Constitution of the United States, it being agreed that if section 1295 was constitutional the Richmond and Alleghany Railroad Company was responsible to the petitioner for the loss of the tobacco, but that if section 1295 was in conflict with the aforesaid clause of the Consti-

tution of the United States, then, under the terms of the bill of lading filed with said petition, the Richmond and Alleghany Railroad Company was not responsible to said petitioner, and was argued by counsel.

On consideration whereof the court is of opinion that section 1295, Code of Virginia 1887, is not in conflict with article I, section 8, clause 3, of the Constitution of the United States, and doth therefore adjudge, order, and decree that the Richmond and Alleghany Railroad Company is liable to the R. A. Patterson Tobacco Company for the amount claimed by them in their petition aforesaid, with interest and cost as follows—to wit:

Principal amount as of August 1, 1888.....	$227 67
Interest on same to date, 4 yrs., 6 mos., 15 days.....	62 04
Costs for depositions.....	10 00
	$299 71

The court doth therefore adjudge, order, and decree that E. K. Leland, special commissioner in these causes, pay out of the fund in the First National Bank of Richmond, Virginia, to the credit of the court in these causes, to the R. A. Patterson Tobacco Company, or to Courtney & Patterson, their counsel, the sum of $299.71, in full satisfaction of the claim of said petitioners.

The following is a copy of the petition above referred to:

Petition.

Your petitioner, The R. A. Patterson Tobacco Company, a corporation duly chartered under the laws of Virginia, respectfully represents that it has a just and legal claim against the defendant Richmond & Alleghany Railroad Co. (or the assets of said railroad company remaining under control of the court in this cause), arising out of the following state of facts.

That on the 1st day of August, 1888, said Richmond & Alleghany Railroad Company, being a common carrier of goods and chattels for hire from the city of Richmond, Va., to Lynchburg and Clifton Forge, Va., and thence by connecting lines of road to various distant points, was employed by said petitioner to take care of and carry, and did then and there undertake and agree to take care of and carry a certain lot of plug chewing tobacco from said city of Richmond to Bayou Sara, La. That in pursuance of said undertaking, the said tobacco was delivered to said railroad company on the day above mentioned, under consignment to Mann & Levy, Bayou Sara, La., and marked accordingly.

13 That the said railroad company received said goods, and gave their receipt, commonly called a bill of lading, for same, a copy of which is herewith filed as Exhibit "A," to be read as a part of this petition: from which said exhibit will appear a particular description, by weight and marks, of the tobacco aforesaid.

Your petitioner further represents that the value of said consignment was about $230, as will be shown at the proper time.

And the petitioner charges that, although the said defendant railroad company received said goods for the purpose aforesaid, yet the said defendant, not regarding its duty in the premises, nor its promise and undertaking so made as aforesaid, hath not taken care of said goods, nor safely and securely carried or conveyed them from Richmond, Va., to Bayou Sara, La., as aforesaid, nor hath delivered the same for your petitioner at said last-mentioned place, according to its promise aforesaid, but, on the contrary, the said defendant railroad company so carelessly and negligently behaved and conducted itself with respect to the said goods, that by and through the mere carelessness, negligence, and improper conduct of the said defendant, and its servants, the said goods were entirely lost to this petitioner.

Your petitioner further represents that immediately upon default of delivery as aforesaid, petitioner endeavored in vain to obtain from said defendant company some information as to the fate of said goods; and petitioner has repeatedly made demand of satisfaction for the loss aforesaid, but so far from responding to the inquiries of this petitioner, or satisfying said demand for payment, the defendant railroad company has utterly ignored all such applications, and left this petitioner remediless save in this honorable court.

In tender consideration whereof, &c., your petitioner asks leave to file this, its petition, praying that the Richmond and Alleghany Railroad Company be made party defendant to this petition and required to answer the same, but answer under oath is hereby expressly waived; that inquiry be directed into the subject-matter of this petition, and the liability of said defendant company to your petitioner be ascertained and paid out of any funds or securities under control of the court in this cause, and that your petitioner may have all such other, further, and general relief as the nature of his case may require or to equity shall seem meet.

And your petitioner will ever pray, &c.

THE R. A. PATTERSON TOB. CO.,
By COUNSEL.

COURTNEY & PATTERSON,
For Petitioner.

The following is a copy of Exhibit "A" filed with the foregoing petition:

EXHIBIT "A."

Form 131.

Lawrence Myers and Decatur Axtell, receivers Richmond and Alleghany railroad.

Through Bill of Lading.

Rates from Richmond to New Orleans in cents per one hundred pounds.

Weights and classification subject to correction.

If 1st class, ——; if 2d class, ——; if 3d class, ——; if
14 4th class, ——; if 5th class, ——; if 6th class, ——; if 7th class, ——; if 8th class, ——; if 9th class, ——; if 10th class, ——; special per 70.

RICHMOND, *August 1st*, 1888.

Received by Richmond and Alleghany railroad of R. A. Patterson & Co., under the contract hereinafter contained, the property mentioned below, marked and numbered as per margin, in apparent good order and condition (contents and value unknown)—viz:

Marks and numbers.	Articles.	Weight, subject to correction.
M. & L., Bayou Sara, La.	2¼ boxes. 2 pkgs. 10¼ boxes. 3 " 15 caddies. M'f'd tobacco.	865

Charges advanced, $—. Released.

Consigned to Mann & Levy, at Bayou Sara, La., to be transported by the Richmond and Alleghany railroad to ——, and there to be delivered to connecting railroad or water line, and so on, by one connecting line to another, until they reach the station or wharf nearest to the ultimate destination. If their ultimate destination be beyond the point for which rates are named in the margin, they may, by the connecting carrier nearest to such ultimate destination, be delivered to any other carrier, to be transported to such ultimate point, and the carrier so selected shall be regarded exclusively as the agent of the owner or consignee. Each carrier, subject to the limitations and exceptions contained in this contract, shal be bound to deliver said goods in the same order and condition as that in which it received them, and the ultimate carrier to deliver

them at its station or wharf to the consignee or his assigns, if called for by him or them, as in the contract provided, he or they paying freight and charges thereon, and average, if any.

It is mutually agreed that the liability of each carrier as to goods destined beyond its own route shall be determined by proper delivery of them to the next succeeding carrier.

The carrier shall have liberty to transfer the goods to and transport them by lighters, barges, or any other vessel than that named, and shall have liberty to tow, and assist vessels in any situation, and to sail with or without pilots.

15 No carrier or the property of any shall be liable for gold, silver, precious stones, or metals, jewelry, or treasure of any kind, bank notes, securities, silks, furs, laces, pictures, plate glass, china, or statuary, unless bills of lading are signed therefor, in which their nature and value are expressed, and extra freight expressed and paid for the assumption of extraordinary risk; or for any loss or damage arising from any of the following causes—viz., fire, from any cause, on land or on water, jettison, ice, freshets, floods, weather, pirates, robbers, or theives, acts of God, or of the country's enemies; riots, collissions, explosions, accidents to boilers or machinery, standing, straining, any accident on, or perils of the seas or other waters, or of stream or inland navigation; restraints of Government, legal process, claims of ownership by third parties, detention, deviation, or accidental delay; want of proper cooperage or mending, insufficiency of package in strength or otherwise, rust, dampness, loss in weight, leakage, breakage, sweat, blowing, bursting of casks or packages, from weakness or natural causes, evaporation, vermin, frost, heat, smell, contact with or proximity to other goods, natural decay or exposure to weather, or for loss or damage of any kind on goods whose bulk or nature requires them to be carried on deck or on open cars, or for the condition of packages or any deficiency in the contents thereof, if receipted for by the consignees as in good order. All liability under this bill of lading shall be estimated on the basis of the actual market value of the goods at the place and time of shipment. Varnish, turpentine, camphene, burning fluids, acids, inflammable goods, or other dangerous articles may be transported, if the carrier chooses on deck or elsewhere, and they shall, in all cases, be at the owner's risk. If any such articles be secretly delivered to the carrier, the shipper shall be responsible for any damage resulting therefrom, and such articles may be destroyed by the carrier without incurring any liability therefor. All articles named in this bill of lading are subject to charges for necessary cooperage and repair. No liability shall exist for wrong carriage or delivery of goods, marked with initials or imperfectly marked, unless name and address of consignee be given at time of shipment, such marking being agreed to be taken as proof of contributory negligence.

All claims for damages to goods must be made, and the nature and expense thereof fully disclosed in the presence of the agent of the company having the same then in custody, before they are removed from the station or wharf. Unless written demand for dam-

ages shall be made upon the company liable therefor, or upon the company which actually delivered the goods, within ten days after delivery, all claims for damages shall be taken to have been waived, and no suit shall thereafter be maintainable to recover the
16 same. No agent or employee shall have authority to waive such demand.

If a carrier shall become liable to pay anything on account of goods which have been insured, he shall, to the extent of such liability, have the right of the insured as against the insurer.

In case of the detention by quarantine, obliging a discharge of the articles named in this bill of lading, all risks and liability of the carrier and its property shall cease, and the obligations, under this bill of lading, be deemed to have been entirely fulfilled when the articles shall have been thus discharged, and all risks and expenses incurred thereafter shall be on account of the shipper, owner, or consignee.

The several carriers shall have a lien upon the goods specified in this bill of lading, for all arrearages of freight and charges due by the same owners or consignees of other goods.

In case of loss, detriment or damage to the goods, or delay in the transportation thereof, imposing any liability hereunder, the transportation company or carrier in whose actual custody they were at the time of such loss, damage, detriment, or delay, shall alone be responsible therefor. The receipt of any carrier for the goods shall be *prima facie* evidence of the condition in which he received them, in a suit against any other carrier.

The goods shall be received by the owner or consignee at the station or wharf of the carrier at the ultimate point of delivery, and if not taken away within twenty-four hours after their arrival, may, at the option of the delivering company, be sent to a warehouse, or be permitted to lie where landed, all at the expense and risk of the shipper, owner, or consignee. If no address of a person at the ultimate point of delivery, immediately entitled to *to* such delivery, be disclosed by this bill of lading, the same must be furnished by the shipper, owner or consignee, in writing, to the terminal carrier before the time at which, in ordinary course of transportation, the goods can arrive at such point. A failure to do this or remove the goods within twenty-four hours after their arrival. shall, in case of any subsequent loss of or injury to the latter, be treated as conclusive proof of negligence on the part of shipper, owner, or consignee which contribute- to such loss or injury.

Negligence shall not be presumed as against any carrier under this bill of lading, and no liability shall exist therefor without actual and affirmative proof thereof. The acceptance of this bill of lading is an agreement on the part of the shipper, owner, and consignee of the goods to abide by all its stipulations, exceptions, and conditions as fully as if they were all signed by such shipper, owner,
17 and consignee. This bill of lading is signed for the different carriers who may engage in the transportation, severally but not jointly, and each of them is to be bound by and have the ben-

efit of all the provisions thereof as if signed by it, the shipper, owner, and consignee.

This bill of lading shall have the effect of a special contract, not liable to be modified by a receipt from or any act of an immediate carrier. In witness whereof, bills of lading of this tenor and date have been signed, one whereof being accomplished and others to stand void.

A. L. WILKINSON.

The following is a copy of the answer of the R. & A. R. R. Co.:

The answer of the Richmond and Alleghany Railroad Company to a petition filed in the above-entitled causes, by the R. A. Patterson Tobacco Company, on April 7, 1890, respectfully denies every material allegation contained in said petition, and especially does it deny that in August, 1888, this respondent was employed by petitioner, or did then and there undertake and agree to take care of and carry a lot of chewing tobacco from the city of Richmond to Bayou Sara, La., or that it gave any receipt or bill of lading for the same, or that the said respondent lost the same through the carelessness, negligence, and improper conduct either of itself or any of its servants or agents. Respondent says, that long before the time referred to in said petition, it had ceased to have control and possession of its railroad, or to have any agents or servants authorized to operate the same, or to give any receipt or bill of lading for goods to be transported, all the property of respondent having been taken out of — hands and placed in charge of a receiver by the circuit court of the city of Richmond, in June, 1883, and said receivership having lasted until May, 1889.

Respondent further says, however, that it is informed and believes and charges that the tobacco alleged in said petition to have been destroyed or lost by the negligence of respondent or its servants or agents, was, in fact, lost by the act of God—to wit, by the sinking of a steamer in a violent hurricane whilst it was in due course of transportation to its point of destination.

Respondent further says, that even if the statement contained in said petition were true, no liability would be incurred by respondent, for the following reasons—to wit: Respondent has been informed, and believes and charges, that the loss referred to occurred beyond the terminus of its line and upon a connecting line over which it had no authority or control.

And, having fully answered, respondent prays to be hence dismissed with costs.

18 The following is a copy of the facts agreed to by counsel:

This day these causes came on to be again heard on the papers formerly read and upon the petition of the R. A. Patterson Tobacco Company, the bill of lading therewith filed, marked Exhibit "A," the answer of the Richmond and Alleghany Railroad Company, the general replication to said answer, and the following facts agreed to by counsel, and stated to the court:

That the bill of lading aforesaid is not signed by the shippers, or their agent; that the tobacco in question was an interstate ship-

ment; that the same was delivered by the Richmond and Alleghany Railroad Company to the next succeeding carrier, and was lost after the same had left the possession of the Richmond and Alleghany Railroad Company; that the sole question submitted to the court for decision was whether section 1295, Code of Virginia, 1887, was in conflict with article I, section VIII, clause 3 of the Constitution of the United States, it being agreed that if said section 1295 was constitutional, the Richmond and Alleghany Railroad Company was responsible to the petitioner for the loss of the tobacco, but that if said section 1295 was in conflict with the aforesaid clause of the Constitution of the United States, then under the terms of the bill of lading filed with said petition, the Richmond and Alleghany Railroad Company was not responsible to said petitioner; and was argued by counsel.

On consideration whereof, the court is of opinion that section 1295, Code of Virginia, 1887, is not in conflict with article I, section VIII, clause 3, of the Constitution of the United States, and doth therefore adjudge, order, and decree that the Richmond and Alleghany Railroad Company is liable to the R. A. Patterson Tobacco Company for the amount claimed by them in their petition aforesaid, with interest and costs as follows—to wit:

Principal amount as of August 1, 1888	$227 67
Interest on same to date, 4 yrs., 6 mos., 15 days	62 04
Costs for depositions	10 00
	$299 71

The court doth therefore adjudge, order, and decree that E. R. Leland, special commissioner in these causes, pray out of the fund in the First National Bank of Richmond, Virginia, to the credit of the court in these causes, to the R. A. Patterson Tobacco Company, or to Courtney & Patterson, their counsel, the sum of $299.71, in full satisfaction of the claim of said petitioners.

19 *Notice of Appeal.*

To R. A. Patterson Tobacco Co.:

Take notice.—That I shall, on the 20th day of Feb'y, 1893, apply to the clerk of the circuit court of the city of Richmond for a transcript of so much of the record in Terrell & Bocock, trustees, *vs.* R. & A. R. R. Co., and Alexander & Ellyson, trustees, *vs.* Same, as may be necessary to the correct understanding of the decree of Feb'y 14th, 1893, in the matter of the petition of the R. A. Patterson Tobacco Co.

RICHMOND AND ALLEGHANY R. R. CO.,
By COUNSEL.

H. TAYLOR, JR.,
For R. & A. R. R. Co.

Feb'y 20th, '93.

We accept notice of the above notice.

COURTNEY & PATTERSON,
For R. A. Patterson Tobacco Co.

A true transcript of the record.
Teste:

ALFRED SHEILD, *Cl'k.*

Fee, $5.25."

And now, at this day, to wit:

At a supreme court of appeals, held in the State library building, in the city of Richmond, on Thursday, March 12th, 1896.

Came the parties, by their counsel, and the court, having maturely considered the transcript of the record of the decree aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the said decree. Therefore it is decreed and ordered that the same be affirmed, and that the appellant pay to the appellee damages according to
20 law, and also its costs by it about its defence herein expended.
Which is ordered to be certified to the said circuit court.

The following is a copy of the opinion of the supreme court of appeals of Virginia:

21

Opinion.

R. & A. R. R. Co. *et als.* *v.* R. A. Patterson Tobacco Co. } Opinion by Judge James Keith, P., Richmond, Va., March 12, 1896.

The Patterson Tobacco Company filed its petition in the chancery causes styled Terrell and Bocock, trustees, *v.* Richmond and Alleghany Railroad Company and others, and Alexander and Ellyson, trustees, *v.* Same, pending in the circuit court for the city of Richmond, from which it appears that on August 1, 1888, the tobacco company delivered to the receivers of the R. & A. R. R. Co., at Richmond, a lot of tobacco consigned to Mann & Levy, at Bayou Sara, La., to be transported in accordance with the bill of lading filed with their petition.

The bill of lading is in the usual form and acknowledges the receipt of the several boxes and packages shipped, their weight, and classification. Among its provisions it sets out that it "is mutually agreed that if the ultimate destination of the packages received be beyond the point for which rates are named in the margin, they may, by the connecting carrier nearest to such ultimate destination, be delivered to any other carrier to be transported to such ultimate point, and the carrier so selected shall be regarded exclusively as the agent of the owner or consignee." * * * "It is mu-
22 tually agreed that the liability of each carrier as to goods destined beyond its own route shall be terminated by proper delivery of them to the next succeeding carrier."

From the agreed facts it appears "that the bill of lading is not

signed by the shippers or their agent; that the tobacco in question was an interstate shipment; that it was delivered by the R. & A. R. R. Co. to the next succeeding carrier and was lost after it had left the possession of the R. & A. R. R. Co.; that the sole question submitted to the court for decision was whether section 1295 of the Code was in conflict with article 1, section 8, clause 3, of the Constitution of the United States, it being agreed that if said section was constitutional the Richmond & Alleghany R. R. Co. was responsible to the petitioner for the loss of the tobacco, but if it was in conflict with the aforesaid clause of the Constitution, then under the terms of the bill of lading filed with the petition the railroad company was not responsible."

By its decree the circuit court held that section 1295 was not in conflict with the Constitution of the United States, and the prayer of the petition was granted and a decree entered in favor of the petitioner for the sum of $299.71; and thereupon the railroad company obtained an appeal and supersedeas from this court.

23 Section 1295, above referred to, is as follows: "When a common carrier accepts for transportation anything, to a point of destination beyond the terminus of his own line or route, he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless, at the time of such acceptance, such carrier be released or exempted from such liability by contract in writing signed by the owner or his agent; and, although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless, within a reasonable time after demand be made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge."

That Congress has, under the Constitution of the United States, the power to regulate commerce is of course uncontroverted; that this power is, when exercised, exclusive in its character, and that the omission on the part of Congress to exercise the power over commerce with which it is clothed is in those respects in which the subject is capable of being dealt with by general regulations equivalent to a declaration of the will of Congress that it shall remain free and uncontrolled are propositions which seem to be thoroughly settled by the decisions of the Supreme Court of the United States. We need, therefore, only to inquire whether the statute just quoted is a regulation of commerce. If it be, we must declare it unconstitutional as trenching upon a province beyond the domain of State authority and over which Congress is given exclusive jurisdiction. The Supreme Court has construed clause 3, section 8, of article 1 in many cases. It has held that the power to regulate com-

24 merce among the States embraces the power to regulate all the various agencies by which that commerce is conducted. From these decisions it may be said that State laws which undertake to enforce a tax upon interstate or foreign commerce in any form or any law of a State which imposes a burden or hindrance upon commerce, or which tends to embarrass commercial intercourse and transactions, or which under any disguise or in any

manner seeks to give the citizens of one State any advantage over the citizens of other States engaged in interstate commerce, are regulations of commerce repugnant to the Constitution and void; but that court, with its accustomed conservatism, content to watch over and guard our system of government as time and occasion may render its intervention necessary, has wisely refrained from all effort at generalization or any attempt at enumeration of subjects as being within or without the one jurisdiction or the other which will furnish a safe guide in determining cases which have not come under its criticism.

It is, indeed, somewhat difficult to classify the decided cases and from them deduce harmonious rules of interpretation. Having given them, however, diligent investigation and our best consideration, we find that there is no reported decision which can be held directly to control the case before us.

Now, it is entirely clear that if there were no such statute law as that embodied in section 1295, there would be no liability upon the appellant, for it appears from the agreed facts that, in accordance with the provisions of the bill of lading, the packages entrusted to its care were duly delivered to the next succeeding carrier, and then its liability under the bill of lading terminated. At the first blush it would seem that the statute did regulate and control the bill of lading, which is conceded to be one of the instrumentalities of commerce. Upon a closer inspection of it, however, it is apparent that the law is careful to avoid any interference with the utmost freedom in the making of contracts and does not in any way attempt to control the legal effect of the contract when made. It in effect establishes a rule of evidence.

25 The common-law measure of liability being considered onerous and oppressive, the carrier is permitted to stipulate with the shipper so as to limit his responsibility by the insertion of any just and reasonable ground of exemption. It has therefore come to pass that bills of lading, like policies of insurance, have been expanded into cumbrous documents, in which the liability of the carrier is hedged about by almost innumerable exceptions, conditions, and exemptions, to which no one ought to be bound until they have been brought to his knowledge and attention and have received his intelligent approval. The statute does not say a certain exception, condition, or stipulation shall be void though embraced in the contract between the shipper and the carrier, but it declares what shall be the implied liability upon the carrier who receives goods for shipment in the absence of a special contract; and, in order to protect shippers from imposition, further declares that the contract relied upon to reduce the measure of the implied liability must be in writing and signed by the shipper. For the protection of the insured it has been found necessary in this and other States to declare by statute that certain provisions in policies of insurance shall be void unless printed in type of a certain size, while the "statute of frauds" is, in some form, it is believed, a part of the jurisprudence of every State in the Union. The statute under consideration was doubtless conceived in a like spirit as a necessary

and salutary precaution and safeguard against the dangers to which experience had shown that shippers were exposed. Such contracts are not without precedent. There was such a contract signed by the shipper in Hart *v.* Penn. R. R. Co., 112 U. S., 331.

26 State laws have been upheld which declare "all contracts, receipts, rules, and regulations * * * void" which exempt a railroad company or other person from full liability as a common carrier. See Talbott *v.* Merchants' Dispatch Co., 41 Iowa, at page 249. It is true the constitutionality of the statute was not in terms passed upon, the case having been decided in favor of the contract upon the ground that it was made in Conn., but the court distinctly asserts the validity of the Iowa law, which had been upon the statute book for many years, and was expressly upheld in the case of McDaniel *v.* Chicago, &c., R. R. Co., 24 Iowa, 412, and a liability under it enforced, the contract of the parties being overridden by the law.

In Maryland a law which makes bills of lading in all respects negotiable was upheld, though no one need be told that it changed very materially the rights and liabilities of the parties and was attended with far more serious and important consequences to shippers, consignees, and carriers than a law which only declares how a contract shall be evidenced. See Tiedeman *v.* Knox, 53 Md , 613. In same connection see Shaw *v.* Merchants' Nat. Bank of St. Louis, 101 U. S., 557, where Mr. Justice Strong, delivering the opinion, discusses at great length the interpretation and effect of the statutes passed by the States of Missouri and Pennsylvania, and shows very satisfactorily that those acts did not make bills of lading in

27 all respects negotiable, while there is not one word to show that he at all questioned the powers of the States to do so, though a denial of the power would have gone to the very root of the subject under discussion.

So, too, statutes which render the principal responsible for the act of his agent in issuing bills of exchange have been upheld, and others of a like nature which need not be mentioned.

Viewed, therefore, as a law which levies no tax, prescribes no duty, imposes no burden upon and in no way interferes with or regulates commerce, and which in no manner diminishes the power to contract, but which merely requires certain contracts to be in writing and signed by the shipper, the party with respect to whom the duties and liabilities of the common carrier are by such special contracts to be limited, it seems to us that section 1295 of the Code, or rather the first branch thereof (the remainder of the section having no bearing upon the question before us), and which reads as follows: "When a common carrier accepts for transportation anything directed to a point of destination beyond the terminus of his own line or route he shall be deemed thereby to assume an obligation for its safe carriage to such point of destination, unless at the time of such acceptance such carrier be released or exempted from such liability by contract in writing, signed by the owner or his agent," is not in conflict with the Constitution of the United States.

As was said by Judge Lewis in Western Union Tel. Co. *v.* Tyler,

90 Va., at p. 300, where section 1292, which imposes a penalty upon telegraph companies for failure to deliver messages, was called in question as being a regulation of commerce, "If it can be said to affect commerce at all, it does so only remotely and incidentally."

28 Mr. Justice Matthews, in Smith *v.* Alabama, 124 U. S., 465, states the law with his usual force and accuracy as follows: "It is among the laws of the States, therefore, that we find provisions concerning the rights and duties of common carriers of persons and merchandise, whether by land or by water, and the means authorized by which injuries resulting from the failure properly to perform their obligations may be either prevented or redressed. A carrier exercising his calling within a particular State, although engaged in the business of interstate commerce, is answerable according to the laws of the State for the acts of nonfeasance or misfeasance committed within its limits. If he shall fail to deliver goods to the proper consignee at the right time or place, he is liable in an action for damages under the laws of the State in its courts; or if by negligence in transportation he inflicts injury upon the person of a passenger brought from another State, a right of action for the consequent damage is given by the local law. In neither case would it be a defense that the law giving the right to redress was void as being an unconstitutional regulation of commerce by the State. This, indeed, was the very point decided in Sherlock *v.* Alling, 93 U. S., 99. If it is competent for the State thus to administer justice according to its own laws for wrongs done and injuries suffered when committed and inflicted by defendants while engaged in the business of interstate or foreign commerce, notwithstanding the power over those subjects conferred upon Congress by the Constitution, what is there to forbid the State, in the further exercise of the same jurisdiction, to prescribe the precautions and safeguards fore-

29 seen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, it is admitted the State has power to redress and punish?"

* * *

"But for the provisions on the subject found in the local law of each State, there would be no legal obligation on the part of the carrier, whether *ex contractu* or *ex delicto*, to those who employ him; or if the local law is held not to apply where the carrier is engaged in foreign or interstate commerce, then, in the absence of laws passed by Congress or presumed to be adopted by it, there can be no rule of decision based upon rights and duties supposed to grow out of the relation of such carriers to the public or individuals. In other words, if the law of the particular State does not govern that relation and prescribe the rights and duties which it implies, then there is and can be no law that does until Congress expressly supplies it, or is held by implication to have supplied it, in cases within its jurisdiction, over foreign and interstate commerce. The failure of Congress to legislate can be construed only as an intention not to disturb what already exists, and is the mode by which it adopts, for

cases within the scope of its power, the rule of the State law, which, until displaced, covers the subject."

To the luminous exposition of the law contained in the above quotation we feel that we can add nothing. Therefore, without prolonging this discussion, we are, for the foregoing reasons, of opinion that section 1295 is a valid and constitutional law, and the decree of the circuit court is affirmed.

Certified copy.

GEO. K. TAYLOR, *C. C.*

30 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true transcript of the record in the cause lately pending in said court, in which The Richmond and Alleghany Railroad Company was appellant and The R. A. Patterson Tobacco Company was appellee.

In testimony whereof I hereto set my hand and annex the seal of said court this 30th day of April, 1896.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

GEO. K. TAYLOR,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, James Keith, president of the supreme court of appeals of Virginia, do certify that George K. Taylor, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand this 30th day of April, 1896.

JAMES KEITH.

The fee of the clerk of the supreme court of appeals of Virginia for this transcript of the record is $10.00.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of appeals of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals of Virginia, before you or *of* some of you, being the highest court of law or equity of the said State in which a decision could be had in a said suit between The R. A. Patterson Tobacco Company and The Richmond and Alleghany Railroad Company, H. L. Terrell, surviving trustee of himself and Thomas S. Bocock, deceased, trustees, and Henry M. Alexander, surviving trustee of himself and Henry K. Ellyson, deceased, trustees, wherein was drawn in question the

validity of a statute of said State of Virginia, on the ground of its being repugnant to the Constitution or laws of the United States, and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said Richmond and Alleghany Railroad Company, H. L. Terrell, surviving trustee of himself and Thomas S. Bocock, deceased, trustees, and Henry M. Alexander, surviving trustee of himself and Henry K. Ellyson, deceased, trustees, as by their complaint appears, we, being willing that error, if any hath been done, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and
32 according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 27th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Allowed by—

JAMES KEITH,
President Supreme Court of Appeals, Virginia.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do certify that a copy of this writ is on file in my said office.

Given under my hand this 30th April, 1896.

GEO. K. TAYLOR, *C. C.*

33 [Endorsed:] Richmond and Alleghany Railroad Co. & others *v.* R. A. Patterson Tobacco Co. Writ of error.

34 The United States of America to the R. A. Patterson Tobacco Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of Virginia, wherein The Richmond and Alleghany Railroad Company, H. L. Terrell,

surviving trustee of himself and Thomas S. Bocock, deceased, trustees, and Henry M. Alexander, surviving trustee of himself and Henry K. Ellyson, deceased, trustees, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable president of the supreme court of appeals of Virginia this 27 day of April, 1896, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES KEITH,
President Supreme Ct. of Appeals of Virginia.

Legal service of the above notice is hereby acknowledged.

R. A. PATTERSON TOB'O CO.,
By COUNSEL.

A. W. PATTERSON,
For Appellee.

35 [Endorsed:] R. & A. R. R. Co. & others *v.* R. A. Patterson Tobacco Co. Citation.

36 Know all men by these presents that we, The Richmond and Alleghany Railroad Company, as principal, and Decatur Axtell, as surety, are held and firmly bound unto The R. A. Patterson Tobacco Company in the full and just sum of one thousand dollars ($1,000), to be paid to the said R. A. Patterson Tobacco Company, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents, the above-bound Decatur Axtell hereby waiving the benefit of his homestead exemption to this obligation.

Sealed with our seals and dated this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at the March term of the supreme court of appeals of Virginia, in a suit depending in said court between The R. A. Patterson Tobacco Company and The Richmond and Alleghany Railroad Company, H. L. Terrell, surviving trustee of himself and Thomas S. Bocock, deceased, trustee, and Henry M. Alexander, surviving trustee of himself and Henry K. Ellyson, deceased, trustees, a decree was rendered against the said parties defendant, and the said parties defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree aforesaid in the aforesaid suit, and citation directed to the said R. A.

37 Patterson Tobacco Company, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof:

Now, the condition of the above obligation is such that if the said Richmond and Alleghany Railroad Company shall prosecute its said writ of error to effect and answer all damages and costs if

it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

RICHMOND AND ALLEGHANY RAILROAD COMPANY,
By DECATUR AXTELL, *Receiver.* [SEAL.]
DECATUR AXTELL. [SEAL.]

Sealed and delivered in presence of—
A. J. T. TREVVETT.

Approved by—
JAMES KEITH,
President Supreme Court of Appeals of Virginia.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, A. J. T. Trevvett, a notary public in and for the city and State aforesaid, do hereby certify that this day personally appeared before me Decatur Axtell, who, being by me duly sworn, did depose and say that after the payment of all his just debts and liabilities
38 and those of which he is jointly bound with others and expects to have to pay he is worth not less than the said above-mentioned sum of one thousand dollars ($1,000).

Given under my hand this 27th day of April, 1896.

A. J. T. TREVVETT,
Notary Public.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the original bond, of which the foregoing is a true copy, is on file in my office.

Given under my hand this 30th day of April, 1896.

GEO. K. TAYLOR,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

Endorsed on cover: Case No. 16,293. Virginia supreme court of appeals. Term No., 1003. The Richmond & Alleghany Railroad Company *et al.*, plaintiffs in error, *vs.* The R. A. Patterson Tobacco Company. Filed May 8, 1896.